HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.11262 OF 1998

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Between:

Smt. Mopuru Bhagyamma

……Petitioner

And

The Union of India,
Rep. by its Secretary,
Ministry of Home Affairs,
Freedom Fighters Division
and two others

……Respondents

:: ORDER ::

Counsel for the Petitioner : Sri A. Chandraiah Naidu

Counsel for the Respondents : Sri A. Rajasekhar Reddy,
Assistant Solicitor General

Dated: 19-07-2006

During 25th anniversary of independence, the Central Government framed scheme for grant of pension to freedom fighters and their families from the central revenue. Later on, that scheme was replaced by Swatantrata Sainik Samman Pension Scheme, 1980 (for short 'the 1980 Scheme'). These schemes were framed with a view to honour the freedom fighters and their families and, wherever necessary, to mitigate the sufferings of those who had sacrificed their lives, comforts and benefits for achieving freedom from the oppressive rule of Britishers. Since the 1980 scheme envisages the grant of pension to the freedom fighters and their families only, the Central Government laid down certain conditions of eligibility and also prescribe the procedure to be followed for claiming pension. Unfortunately, implementation of the 1980 scheme has given rise to lot of litigation in various courts including the Supreme Court. The earlier case decided by the Supreme Court is **Mukund Lal Bhandari vs. Union of India**[1] and the latest one is **Bhaurao Dagdu Paralkar v. State of Maharashtra**[2]**.** In **Mukund Lal Bhandari's** case (supra), the Supreme Court highlighted the objectives of the 1980 Scheme in the following words:

> "The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its

spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the Scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now."

I have made a mention of the aforementioned two judgments because the issue raised in this petition is whether the petitioner is entitled to get family pension under the 1980 scheme. Her claim is founded on the following assertions:

1) Her husband late Sri M. Papachari had participated in the freedom movement in 1942.

2) He was tried in the Court of Special Judge, Chittoor in Ordinance Case No. 1 of 1942 and was convicted.

3) The State Government accepted the claim of her husband as a freedom fighter and sanctioned pension in his favour.

4) After the death of her husband, she has been receiving pension under the State Scheme.

It is borne out from the record that the petitioner's husband late Sri M.Papachari had applied for grant of pension under the 1980 Scheme. His application was not decided during his lifetime, but after his demise, the Central Government rejected the petitioner's claim for grant of family pension on the ground that her husband had not suffered actual imprisonment for a period of six months as contemplated under Clause 4 of the 1980 Scheme. This was conveyed to her by the Government of India, Ministry of Home Affairs vide letter dated 21-121995, the relevant portion of which is reproduced below:

> "The Chargesheet No. 52 in ordinance case No.1 of 1942 produced by you in support of your husband's imprisonment sufferings, clearly shows that late Mopuru Papachari was not imprisoned but was admonished under Sec. 25 of the children Act. Since he was neither sentenced nor suffered the required minimum of six months imprisonment, he is not eligible grant of freedom fighters pension under the S.S.S. pension Scheme, 1980."

Sri A. Chandraiah Naidu, learned advocate for the petitioner made strenuous efforts to convince me that even though late Sri M.Papachari did not actually suffer six months imprisonment inasmuch as he was let off by the Special Judge, Chittoor by admonition on the ground of young age, Clause 4 of the 1980 Scheme should be construed in a manner which would sub-serve the object underlying the policy of the Government to grant pension to the freedom fighters. Learned counsel laid emphasis on the explanation appearing below Clause 4 of the Scheme and submitted that a person like late Sri M. Papachari who had been convicted by the court of competent jurisdiction was entitled to receive pension as of right and his wife is entitled to receive family pension. In support of this

argument, learned counsel strongly relied on the judgment of the Supreme Court in **Surja v. Union of India**[3].

Sri A. Rajasekhar Reddy countered the argument of Sri Naidu and submitted that rejection of the petitioner's claim for family pension on the premise that her husband had not suffered actual imprisonment does not suffer from any legal infirmity.

Sri Reddy distinguished the judgment of the Supreme Court in **Surja v. Union of India's** case (supra) by pointing out that relief in that case was granted because while undergoing imprisonment, they were released by giving benefit of general amnesty declared by the Nizam.

In support of his submission, Shri Reddy relied on the judgment of the Supreme Court in **Union of India vs. Manohar Lal Azad**[4].

I have considered the respective submissions. Clause 4 of the 1980 Scheme together with its explanation reads as under:

> "4. **WHO IS ELIGIBLE?**
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> For the purpose of grant of Samman pension under the Scheme, a freedom fighter is :-
>
> (a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence on a/c. However, ex-INA personal will be eligible for pension if the imprisonment/detention suffered by them was outside India.
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> (b) The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1.8.1980.
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> **EXPLANATION**
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> 1. Detention under the orders of the competent authority will be considered as imprisonment.
> 2. Period of normal remission up to one month will be treated as actual imprisonment.

3. In the case of a trial ending in conviction, under trial period will be counted towards actual imprisonment suffered.
4. Broken period of imprisonment will be totaled up for computing the qualifying period.

(b) A person who remained underground for more than six months provide he was:

1. A proclaimed offender; or
2. One on whom an award for arrest/head was announced; or
3. One for whose detention order was issued but not served.

(c) A person interned in his home or extended from his district provided the period of internment/externment was six months or more.

(d) A person whose property was confiscated or attached and sold due to participation in the freedom fighter struggle.

(e) A person who became permanently incapacitated during
firing or lathi charge.

(f) A person who lost his job (Central or State Government) and thus means of livelihood for participation in national movement.

A MARTYR is person died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include and ex-INA or ex-Military person who died fighting the British."

A careful reading of clause 4 of the 1980 scheme together with sub-clause (3) of the explanation makes it clear that a person must have suffered actual imprisonment for a period of six months (this period would be three months in the case of women and Scheduled Castes/Scheduled Tribes) before he can be treated eligible for grant of pension under the 1980 Scheme. What is implicit in the language of

the substantive part of Clause 4 of the Scheme is made explicit in sub-clause (3) of the explanation, which provides for counting of the trial period towards actual imprisonment. This is how the aforementioned clause has been interpreted by the Supreme Court in **Union of India Vs. Manohar Lal Azad's** case (supra) wherein while reversing an order passed by the High Court of Punjab and Haryana in Civil Writ Petition No.11462 of 1998, the Supreme Court observed as under:

> "The Samman Pension Scheme was introduced during the silver jubilee year by the Government of India. Indeed it is a modification of the earlier scheme known as "the Freedom Fighters' Pension Scheme of 1972". From 1-8-1980, the benefit of the Samman Pension Scheme has been extended to all freedom fighters as a token of *samman* to them. The eligibility criterion to earn pension under the Samman Pension Scheme is that one should be a freedom fighter. For purposes of this Scheme a freedom fighter is defined in para 4 of the said clause. Clause (a) of para 4 which is relevant for our purpose, is quoted hereunder:
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> > "(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment detention suffered by them was outside India."
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> A perusal of this clause makes it abundantly clear that what is germane is suffering a minimum imprisonment of six months in the mainland before independence but not merely suffering an order awarding imprisonment of six months by a competent court. Explanation 2 to para 4, however, treats the period of normal remission up to one month as part of actual imprisonment."

In paragraphs 9 and 10 of the same judgment, the Supreme Court distinguished the earlier judgment in **Surja Vs. Union of India**

(supra) by recording the following reasons:

> "In the case of *Surja* the writ petitioners were sentenced to imprisonment for a term exceeding six months. While they were undergoing sentence, without their praying for any remission, a general amnesty was declared by the then Nizam on his birthday. Consequently, the sentence was reduced and the petitioners were set free. It was in the backdrop of these facts that this Court observed: (SCC p. 368, para 7)
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> > "In the facts of the case it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period beyond six months' remission had been granted and they were let off earlier would not take away their right to earn pension. Learned Attorney-General appearing for the respondents has accepted this construction of the entitlement clause."
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> From the above observation it is clear that on the peculiar facts of that case it was held that each of the petitioners therein satisfied the condition for earning the benefit of pension. We are unable to read that judgment as laying down that where a person has been sentenced to imprisonment for six months or more but if he comes out within a month or so, for whatever reason, without serving his sentence, he will still be a freedom fighter within the meaning of the Scheme and eligible for the samman pension. To say so, in our opinion, would amount to giving a go-by to the definition of the expression "freedom fighter" and substituting new eligibility criteria for the Scheme enlarging its scope which is not only impermissible but also contrary to the spirit of the Scheme framed on the basis of the material and keeping in mind the class of the political sufferers who would be beneficiaries of the

Samman Pension Scheme."

Since the petitioner's husband late Sri M.Papachari had not suffered actual imprisonment for six months, he was not entitled to receive pension under the 1980 Scheme. As a corollary, it must be held that being the widow of late Sri M. Papachari, the petitioner is not entitled to receive family pension.

For the reasons stated above, the writ petition is dismissed.

G.S. SINGHVI, CJ

19-07-2006

svs

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[1] 1993 Supp (3) SCC 2

[2] (2005) 7 SCC 605

[3] (1991 4 SCC 366

[4] (2002) 10 SCC 568